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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/517,258	03/02/2000	Kent Deshotel	9468.001	4762

7590

01/03/2002

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EXAMINER

PITTMAN, ZIDIA T

ART UNIT

PAPER NUMBER

1725

5

DATE MAILED: 01/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/517,258	DESHOTEL, KENT	
	Examiner	Art Unit	
	Zidia Pittman	1725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 16-29, 44-62, 68 and 70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 30-43, 63-67 and 69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1725

## DETAILED ACTION

### *Election/Restrictions*

Claims 16-29, 44-62, 68, and 70 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected welding method and welding process, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8-12, 15, 30-34, 37-40, 43, 63, 67, and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Sharp (USPN 4,577,088).

Sharp teaches a welding process including providing at least two metal plates having upper and lower surfaces and ends, positioning the plates end to end on a welding bed forming a weld butt between the ends, arcing electric current from a source of electric current to the plates, applying pressure to a surface of the plates with at least one pressure applicator (one or more rollers) positioned on each side of the weld butt, moving the current source along a path following the weld butt between the plates (or moving the plates so that the current source arcs electric current to the plates along the weld butt), securing the plates to the bed and wherein at least one of the pressure applicators is either horizontally or vertically positionable (Sharp: abstract; Figures 5

Art Unit: 1725

and 8; column 5 lines 14-30; column 7 lines 20-68; column 8 lines 1-31; column 9 lines 26-68; column 10 lines 1-49).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6, 7, 13, 14, 35, 36, 41, 42, 64, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp (USPN 4,577,088).

Sharp teaches all the limitations of claims 6, 7, 13, 14, 35, 36, 41, 42, 64, and 65 as stated above for claims 1, 9, 30, 38, and 63 except for teaching a step of applying pressure to the plates at least 18 or 36 inches behind the source of electric current.

Sharp does teach the straightening of the metal plates by the rollers and application of electric current to the plates (column 7 lines 20-68). One with ordinary skill in the art would have optimized the distance of application of pressure to the plates

Art Unit: 1725

from the source of the electric current in order to promote a uniform weld with a very relatively small heat effected zone (see column 2 lines 37-44).

The subject matter as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be a prima facie case of obviousness to select a value in a known range by optimization for the best results. In re Aller, 105 USPQ 233.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fukushima et al (USPN 5,726,410), Sears (USPN 4,392,604), Nagai et al (USPN 4,386,259), Nilsen (USPN 4,341,943), Ohmae et al (USPN 4,287,405), Robertson (USPN 3,937,918), Becker (USPN 3,925,637), Kitani et al (USPN 3,832,523), Becker (USPN 3,805,014), Roberts et al (USPN 3,609,275), and Pollock (USPN 3,602,687) are cited as of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zidia Pittman whose telephone number is (703) 305-1248. The examiner can normally be reached on Monday – Thursday and alternate Fridays from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn, can be reached at (703) 308-3318. The official fax phone

Art Unit: 1725

number for the organization where this application or proceeding is assigned is (703)

305-7718. The unofficial fax number for art unit 1725 is (703) 305-6078.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*MD*

*12/31/01*



TOM DUNN  
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